

From: Dave C. Hill
To: Microsoft ATR,antitrust@usdoj.gov,senator_leahy@le...
Date: 1/11/02 12:05am
Subject: Isn't this "Extra Special" ????

How much more are you going to allow/"Look-The-Other-Way" before you deal with Microsoft like Judge Thomas Penfield Jackson correctly wanted to and order to split up of Microsoft ?? This company continues to make a mockery of the Justice system and anti-trust laws of this country!

Every time they get a chance, they're taking unfair advantage or "Muscling" some company or the Justice Department itself !!!

Prosecute these clowns and quit screwing around with them !!!

01/10/2002 - Updated 05:11 PM ET

Microsoft failed to disclose meetings with lawmakers

WASHINGTON (AP) ó Microsoft communicated with members of

Congress and their aides about its antitrust case and did not disclose the

contacts to the trial judge who requested information about the company's

lobbying in the case. Microsoft said this week it decided to disclose only

contacts with executive branch officials in the required court filings, following

the example of AT&T when it settled its landmark antitrust case in the 1980s.

The company reported to the court that its lone contacts with federal

employees included Justice lawyers and two federal mediators hired to help

assist settlement talks.

Legal experts, however, questioned whether the omission of congressional

contacts violated federal law.

"If you specifically talk about the proposed settlement, that would seem to fall under the requirements of the plain language of the statute," said lawyer Dana Hayter with the firm of Howard Rice in San Francisco.

Both Microsoft and a congressional aide who witnessed the contacts acknowledge Microsoft officials briefed aides of the Senate Judiciary Committee on terms of the settlement just before a December congressional hearing on the case.

The Tunney Act requires defendants in antitrust cases such as Microsoft's to disclose "any and all written or oral communications" with "any officer or employee of the United States" related to the settlement.

In other cases not involving antitrust, judges have ruled that a legislator or congressional staff member counts as a U.S. employee.

Before the law named after him was passed, former Sen. John Tunney, D-Calif., said its requirements "apply equally to contact with any branch of government, including the Congress."

In its twice-a-year reports to Congress on lobbying activities, Microsoft reported spending \$300,000 on lobbying in the first half of 2001 related to the antitrust case.

Several aides of lawmakers acknowledged discussing the settlement negotiations with Microsoft representatives.

An aide to Rep. Jennifer Dunn, R-Wash., talked with Microsoft officials in September, as settlement discussions renewed.

During the same month, Dunn organized over a hundred lawmakers to sign a

letter to the Justice Department and Microsoft Chief Executive Officer Steve Ballmer urging a settlement.

The lawmaker's staff called company executives for advice about appearing on a television show focusing on the case. "We just had to call Microsoft so we could understand better what the issue was," spokeswoman Jen Burita said.

Also in September, after federal prosecutors decided to abandon their effort to break Microsoft into two companies, Dunn talked to Attorney General John Ashcroft and urged an "expedient resolution that will benefit consumers."

Microsoft lobbyist Jack Quinn last year wrote to Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., seeking to persuade him to scuttle the December hearing because the company was concerned that they would "promote the biases" of Microsoft competitors.

Legal experts said congressional contacts about the settlement should have been mentioned in Microsoft's disclosure and that Microsoft could risk its credibility by interpreting the law too narrowly.

"Once a side loses credibility, then you start to question everything they say," said Bob Lande, a law professor at the University of Baltimore.

Lande said the trial judge could force Microsoft to resubmit its disclosure if she doesn't believe it is complete.

Other experts said the law was designed to widely include contacts so the public could best decide whether companies tried to improperly exert influence to win an antitrust settlement.

"The reason to have the broad language is making

sure the disclosure errs on
the side of inclusiveness," said Andy Gavil, an
antitrust expert at Howard
University. "It's for the court and the public to
decide whether there was
improper influence, and not for Microsoft."

In its disclosure to the court, Microsoft
acknowledged speaking only with
U.S. government lawyers, lawyers for the states
suing the company, and two
court-appointed mediators.

Microsoft spokesman Vivek Varma said the company's
disclosure was
modeled on AT&T's antitrust suit that resulted in a
1984 breakup of the
telephone giant.

"That filing was limited to communications with the
executive branch," Varma
said.

The Justice Department and 18 states sued Microsoft
four years ago, alleging
it violated antitrust laws and illegally thwarted
competition.

The original trial judge ruled Microsoft did, in
fact, operate as an illegal
monopoly and should be broken into two companies as
punishment.
Microsoft appealed.

A federal appeals court upheld most of the findings
but reversed the breakup
and ordered that a new judge impose a new penalty.

Microsoft late last year reached a settlement with
the Justice Department and
nine of the states. Nine other states are proceeding
with the case and plan to
go to trial on the penalty issue.

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| "Let every nation know, whether it wishes us well |
| or ill, that we shall pay any price, bear any burden, |
| meet any hardship, support any friend, oppose any foe |

| to assure the survival and the success of liberty." |

|John Fitzgerald Kennedy - 1/20/61 |

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Dave Hill <dchill1@qwest.net> :-)